

RECORDATION NO. 211/2 FILED

DEC 30 '97

10-35 AM

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OF COUNSEL  
URBAN A. LESTER

December 30, 1997

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a), are three copies of a Note and Security Agreement, dated as of December 15, 1997, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed documents are:

Secured Party: NationsBanc Leasing Corporation  
2300 Northlake Centre Drive, Suite 300  
Tucker, GA 30084-4007

Debtor: Pioneer Railroad Equipment Co., Ltd.  
1318 S. Johanson Road  
Peoria, IL 61607

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SURFACE TRANSPORTATION  
BOARD

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Counterparts - K. Bortman

Vernon A. Williams  
December 30, 1997  
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A description of the railroad equipment covered by the enclosed documents is:

Seventy-one (71) Covered Hopper Railcars as better described on the Exhibit A attached hereto.

Also enclosed is a check in the amount of \$24.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed documents to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/bg  
Enclosures

This Note and Security Agreement made as of the date set forth below sets forth the terms and conditions governing the repayment of a loan made by **NationsBanc Leasing Corporation** ("Secured Party") to the party identified below as "Debtor" for the purpose of financing the personal property identified below as the "Equipment", and the granting by Debtor to Secured Party of a security interest in the Equipment and certain related property to secure the repayment of all Debtor's obligations to Secured Party.

**Date:** December 15, 1997

**Agreement Number:** 07024-00702

**Secured Party:** NationsBanc Leasing Corporation  
2300 Northlake Centre Drive, Suite 300  
Tucker, Georgia 30084-4007

RECORDATION NO. 21117 FILED

DEC 30 '97 10-35 AM

**Debtor:** Pioneer Railroad Equipment Co., Ltd.  
1318 S. Johanson Road  
Peoria, IL 61607

**Equipment:** Seventy-One (71) Covered Hopper Railcars as better described on the attached Exhibit A

**Equipment Location:** Railroad System of North America

**Principal Amount of Loan:** \$800,000.00

**Number of Principal Repayment Installments (including Final Repayment Installment):** 84

**Amount of Each Principal Repayment Installment Prior to Final Repayment Installment:** \$9,523.81

**Amount of Final Principal Repayment Installment:** \$9,523.77

**Due Date of First Principal Repayment Installment:** On the sixtieth (60th) day following the date Secured Party funds this Loan.

**Due Date of Final Principal Repayment Installment:** On the seventh year and one month (7<sup>th</sup> year & 1 month) anniversary of the date Secured Party funds this Loan.

**Interest Only Rate For First Thirty Days.** For the first thirty days of the term hereof interest only shall accrue hereon at a per annum rate of interest equal to (i) three and 75/100 percent (3.75%) plus the rate of interest equal to the "average of interbank offered rates for dollar deposits in the London Market based on quotations of five (5) major banks" for a term of 30 days as published in the Wall Street Journal under a heading entitled "Money Rates, London Interbank Offered Rates (LIBOR)" or any future or substitute heading, on the first day of the month in which Secured Party funds this Loan, or (ii) if less, the highest rate of interest permitted by applicable law, and is due and payable on the 30<sup>th</sup> day following the date Secured Party funds this loan.

**Conversion to Long Term Rate.** Principal and interest payments will be fixed twenty-five (25) days following the date Secured Party funds this Loan ("Conversion Day"). The interest accruing hereon, commencing on the 31<sup>st</sup> day following the date Secured Party funds this Loan and for the remainder of the term hereof shall be at a rate equal to (i) three and 75/100 percent (3.75%) per annum above the average rate of interest on debt securities of the United States Treasury having maturities of seven (7) years, as published by the Board of Governors of the Federal Reserve System in its statistical release H.15, entitled "Selected Interest Rates" (or, if such publication is no longer available, any successor publication or data source selected by Secured Party in its reasonable discretion) on the Conversion Day, or (ii) if less, the highest rate of interest permitted by applicable law.

**Loan; Terms of Repayment.** In consideration of the making of a loan by Secured Party to Debtor for the purpose of financing the Equipment specified above (the "Loan"), Debtor promises and agrees to pay to the order of Secured Party, at Secured Party's address stated above or at such other places as Secured Party may from time to time designate in writing, the principal amount of the Loan, together with interest calculated as hereinafter provided. Subject to Debtor's right to prepay such principal amount in whole or in part as hereinafter provided, Debtor shall pay such principal amount together with interest thereon in consecutive monthly installments, each in the amount set forth above under the heading "Amount of Each Repayment Installment Prior to Final Repayment Installment," due and payable on the "Due Date of First Repayment Installment" set forth above and on a like date of each calendar month thereafter until the Loan is fully repaid; provided, however, that the last such installment shall be in the amount set forth above under the heading "Amount of Final Repayment Installment" or (if greater) the amount of the then outstanding principal balance of the Loan together with interest thereon.

**Interest.** Interest shall be calculated on the basis of a year of three hundred sixty (360) days. Each installment shall include all interest accrued through the due date.

**Prepayments.** After one (1) year from the date Secured Party funds this Loan, the outstanding principal balance of the Loan may be prepaid in whole or in part at any time, together with all interest and late charges accrued through the date of prepayment and a prepayment charge calculated by multiplying the amount prepaid by the percentage shown on the attached Prepayment Charge Table.

Partial prepayments shall be applied against principal installments in their inverse order of maturity. Except as provided herein, the Loan may not be prepaid.

**Late Charges.** To the extent permitted by applicable law, Debtor shall pay on demand, as a late charge, an amount equal to five percent (5%) of each installment or part thereof that is not paid within ten (10) days of the date when due, but nothing in this paragraph alters the definitions of events of default hereunder. Debtor shall pay the late charge, to the extent permitted by applicable law, regardless of whether or not Debtor's failure to pay such installment when due is or becomes a default hereunder and regardless of whether or not Secured Party proceeds under the "Remedies" provisions hereof or takes any other action, and demand for and collection of the late charge shall not be deemed a waiver of default or of any other remedies or rights.

**Security Interest.** Debtor hereby grants to Secured Party a security interest in and security title to the personal property described above as the "Equipment", together with all parts, additions, accessions, accessories, replacements and substitutions thereto or therefor, and all proceeds therefrom (including any proceeds of insurance against fire or other casualty whether or not the insurance policy contains an endorsement in favor of Secured Party), all of which is hereinafter called the "Collateral". This security interest is given to secure payment to Secured Party of all present and future obligations of Debtor to Secured Party, including without limitation the obligation of Debtor to repay the Loan and all other liabilities arising under or in connection with this Agreement; all future advances, if any, made by Secured Party to Debtor, whether or not made pursuant to any commitment of Secured Party (and nothing in this Agreement shall be construed to create or imply the existence of any such commitment); and all other liabilities of Debtor to Secured Party now existing or hereafter incurred, matured or unmatured, direct or contingent, whether or not evidenced by a promissory note, and whether owing originally to Secured Party or acquired by Secured Party from any other party, and any renewals and extension thereof and substitutions therefor. (All of the above obligations, including but not limited to obligations in respect of the Loan, are hereinafter called the "Indebtedness.")

### **Debtor Warrants and Represents that:**

**Good Standing.** Debtor is organized and existing in good standing under the laws of the jurisdiction of its formation, has the power to own its property and to carry on its business as now being conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which the character of the property owned by it therein or the transaction of its business makes such qualification necessary.

**Authority.** Debtor has full power and authority to enter into this Agreement, to make the borrowing hereunder, and to incur the obligations provided for herein, all of which have been duly authorized by all proper and necessary action. No consent or approval of stockholders, partners, members or co-owners or of any public authority is required as a condition to the validity of this Agreement.

**Binding Agreement.** This Agreement constitutes the valid and legally binding obligation of Debtor enforceable in accordance with its terms.

**Litigation.** There are no proceedings pending or threatened before any court or administrative agency that might materially adversely affect the financial condition or operation of Debtor.

**No Conflicting Agreements.** There is no charter, by-law, preference stock or partnership agreement provision of Debtor and no provision of any other organizational documents or existing mortgage, indenture, contract or agreement binding on Debtor or affecting its property which would conflict with or in any way prevent the execution, delivery or performance of the terms of this Agreement.

**Ownership Free of Encumbrances.** Except for the security interest granted hereby, Debtor now owns, or will use the proceeds hereof to become the owner of, the Collateral free from any prior lien, security interest or encumbrance. No financing statement covering the Collateral or any proceeds thereof is on file in any public office, except for financing statements showing Secured Party as the sole secured party thereunder. Debtor has a good right to grant a security interest in the Collateral to Secured Party.

**Fixtures.** None of the Collateral is now a part of or affixed to any real property.

**Collateral Location.** Except for items of Collateral that constitute mobile goods and that are in fact in use by Debtor in the ordinary course of its business at other locations, all the Collateral comprising goods heretofore delivered to the Debtor by the seller thereof is located either at (i) Debtor's address set forth above or (ii) the "Equipment Location" set forth above.

**Merger/Name Change.** Within the five (5) years preceding the date hereof, Debtor has not changed its name or been party to any merger or other corporate reorganization.

### **Debtor Covenants and Agrees that until all the Indebtedness is fully satisfied:**

**Insurance.** Debtor shall maintain continuously, and pay when due all premiums for, fire and casualty insurance with extended coverage on the Collateral, insuring the same against loss by fire, explosion, theft and such other casualties as are usually insured against by companies engaged in the same or similar businesses with a responsible company or companies satisfactory to Secured Party, in an amount not less than the unpaid balance of the Loan. Each of such insurance policies shall have attached thereto a standard loss payable endorsement, without contribution, in favor of Secured Party as its interest may appear; shall provide that it may not be canceled without thirty (30) days' prior written notice to Secured Party; shall provide that, in respect of Secured Party's interest in such policy, the insurance shall not be invalidated by any action or inaction of Debtor or any other person (other than Secured Party); shall insure Secured Party's interest in the Collateral as it may appear, regardless of any breach or violation of any warranty, declaration or condition contained in such policy by Debtor or any other person (other than Secured Party); and shall otherwise be in form and substance acceptable to Secured Party. Debtor shall deliver forthwith to Secured Party each such policy (together with the loss payable endorsement), or certificates of insurance or other evidence satisfactory to Secured Party of the existence of all required insurance, its terms and conditions, and the payment of all applicable premiums. Similar evidence of renewal coverage, satisfactory to Secured Party, shall be delivered to Secured Party at least fifteen (15) days before the expiration of any initial insurance coverage. In addition, Debtor shall maintain, and pay when due all premiums for, liability and other insurance in such amounts and against such risks as is customarily carried by persons in similar businesses owning similar property. Debtor irrevocably appoints Secured Party as Debtor's attorney-in-fact, with full power of substitution, during the existence of any default under this Agreement, to execute loss claims and other applications for payment of benefits under any insurance policy in the name of Debtor or Secured Party, to receive all monies and to

endorse drafts, checks and other instruments for the payment of any proceeds of any insurance. This appointment shall be deemed a power coupled with an interest and shall not be terminable by Debtor so long as Debtor remains indebted to Secured Party.

**Maintenance and Clear Title.** Debtor shall keep the Collateral in good condition and free from liens and security interests, shall not sign or suffer to be filed any financing statements relating to the Collateral except those showing Secured Party as sole secured party shall not sell or lease or offer to sell or lease or otherwise encumber or dispose of any of the Collateral, shall defend the Collateral against all claims and demands of all persons at any time claiming any interest or right therein, and shall not use the Collateral illegally. Secured Party may examine and inspect the Collateral at any time, wherever located.

X Debtor shall affix and maintain on each side of each item of Collateral, the following identification in block letters not less than two inches high: "NATIONSBANC LEASING CORPORATION, SECURED PARTY", or other appropriate identification designated by Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the rights of the Secured Party under this Note and Security Agreement. Debtor will not place the Collateral or any portion thereof in operation or exercise any control or dominion over same until the identifications required hereunder shall have been so affixed. Debtor shall affix and maintain on each item of Collateral, the serial number and other identifying numbers set forth above under the heading "Equipment", and Debtor shall not change the identifying number of any item of Collateral except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been delivered to Secured Party by Debtor and filed, recorded or deposited by Debtor in all public offices where this Note and Security Agreement or any notice thereof shall have been filed, recorded or deposited. Except as provided in this paragraph, Debtor shall not allow the name of any person, corporation or other entity to be affixed on the Collateral or any portion thereof that may be interpreted as a claim of ownership, security interest, or other interest; provided, however, that Debtor may affix on the Collateral or any portion thereof the names, the initials or other insignia customarily used by Debtor on railroad equipment used by Debtor.

**Change of Name, Residence or Place of Business.** Debtor shall not change its name, residence or place of business or do business under any assumed or fictitious name without giving Secured Party at least thirty (30) days prior written notice.

**Change of Structure.** Debtor shall maintain its existence, and shall not merge or consolidate with or into any other entity or sell substantially all of its assets.

**Use of Collateral.** Debtor shall use the Collateral exclusively for business operations. With respect to the operation, use, storage, and maintenance of the Collateral, Debtor shall comply in all respects with (i) all laws of the jurisdictions in which the Collateral may be operated; (ii) all applicable rules of the Association of American Railroads; and (iii) all laws, rules, regulations and orders of the Department of Transportation and the Interstate Commerce Commission and any other federal, state or local legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Collateral (collectively, "Applicable Laws"). If any Applicable Law requires the Collateral, or any item or portion thereof of accessory or attachment thereto, to be altered or modified, Debtor shall make such alterations or modifications at its own expense.

**Fixtures.** Debtor shall not permit any of the Collateral to become a part of or affixed to any real property.

**Location of Collateral.** Except for items of Collateral that constitute mobile goods and that are in fact in use by Debtor in the ordinary course of business at other locations, all the Collateral shall, from and after the moment that Debtor acquires possession or control of it, be kept either at (i) Debtor's address set forth above or (ii) the "Equipment Location" set forth above, and all records relating to the Collateral shall likewise be kept only at such location or locations. If at any time the Collateral, or any part thereof, is removed to a new location, Debtor: (a) shall provide written notice thereof to Secured Party within thirty (30) days from the date of such relocation; and (b) either (i) the premises in which such Collateral will be installed will be owned by Debtor free of any liens or encumbrances, or (ii) if not owned by Debtor free of liens or encumbrances, the owner of such premises and/or the holder of any such liens or encumbrances on such premises shall have consented and acknowledge the superiority of Secured Party's interest in such Collateral.

**Indemnification.** Debtor shall indemnify Secured Party against all claims arising out of or connected with the ownership or use of the Collateral.

**Motor Vehicles.** If the Collateral consists of or includes motor vehicles or other equipment for which there is a certificate of title evidencing ownership thereof, Debtor shall forthwith cause each certificate to be endorsed over and the lien of Secured Party to be noted so as to show Secured Party's interest, and Debtor shall deliver forthwith each such certificate to Secured Party.

**Taxes.** Debtor shall pay promptly when due all taxes, charges and assessments that are or may become a lien on the Collateral or any part thereof, except to the extent that the same are contested in good faith and by appropriate proceedings.

**Financial Statements.** During the term of this Loan, Debtor (i) shall furnish Secured Party annual balance sheets and profit and loss statements of Debtor and of any guarantor of Debtor's obligations hereunder within 120 days after the end of Debtor's (and any guarantor's) fiscal year, and (ii) at Secured Party's request, shall furnish Secured Party all other financial information and reports reasonably requested by Secured Party at any time, including quarterly or other interim balance sheets and profit and loss statement of Debtor and of any such guarantor. Debtor shall furnish such other information as Secured Party may reasonably request at any time concerning the Debtor and its affairs, including without limitation information concerning the Collateral. Debtor represents and warrants that all information furnished and to be furnished by Debtor to Secured Party is accurate and that all financial statements Debtor has furnished and hereafter may furnish to Secured Party, including operating statement and statements of condition, are and will be prepared in accordance with generally accepted accounting principals, consistently applied, and reasonably reflect and will reflect, as of their respective dates, results of the operations and financial condition of Debtor and of any other entity they purport to cover.

**Reimbursement for Expenses.** At its option, and with no obligation to do so, Secured Party may (i) if an event of default exists, discharge taxes or other encumbrances on the Collateral, or pay for the repair, maintenance and preservation of the Collateral and (ii) ten (10) days after notifying Debtor of Secured Party's intent to do so, arrange and pay for insurance on the Collateral. Debtor agrees to reimburse Secured Party on demand for any payments so made; Debtor also agrees to reimburse and pay to Secured Party on demand all expenses incurred or paid by Secured Party in perfecting the security interest granted hereunder and in collecting the Indebtedness and in protecting or enforcing Secured Party's rights under this Agreement, including but not limited to reasonable attorney's fees and legal expenses. Until Debtor makes such reimbursement, the amount of all such payments and expenses, with interest at the rate then applicable to principal installments of the Loan not paid when due, from the date of payment until reimbursement, shall be added to the Indebtedness and shall be secured by the security interest granted by Debtor under this Agreement. Nothing in this paragraph relieves

Debtor of the duty to care for, insure and protect the Collateral and Secured Party's interests therein and to pay tax on or related to the Collateral, or of any other duty.

**Sale or Replacement of Collateral.** Debtor shall not sell or replace any item or part of the Collateral without the prior written consent of Secured Party.

**Post Default Interest.** Any principal balance not paid when due (whether by acceleration or otherwise) shall accrue interest at the "Default Rate" until such principal balance is paid. "Default Rate" shall be a per annum rate of interest equal to (i) fifteen percent (15.0%) or (ii), if less, the highest rate of interest permitted by applicable law. Secured Party may, at its option, apply late payments (either in full or partial) in the following manner: first to interest, then to principal, and finally to late charges. To the extent permitted by applicable law, Debtor shall pay interest on delinquent principal installments on demand regardless of whether or not Secured Party proceeds under the "Remedies" provisions hereof or takes any other action, and demand for and collection of interest on such overdue installments at the Default Rate shall not be deemed a waiver of default or of any other remedies or rights.

**Events of Default.** Debtor shall be in default under this Agreement upon the happening of any of the following events or conditions, each of which is an event of default:

1. Default shall be made in the payment of any installment of the Loan, or in the payment of any other Indebtedness, when and as the same becomes due and payable, whether at the stated maturity thereof or by acceleration or otherwise, and such default shall continue unremedied for ten (10) days; or
2. Default shall be made in the due observance or performance of any term, covenant or agreement contained in this Agreement (other than covenants and agreements to pay Indebtedness), and such default shall continue unremedied for ten (10) days after written notice thereof is given by Secured Party to Debtor; or
3. Any representation or warranty made by Debtor in this Agreement, or any statement or representation made in any certificate, report or opinion delivered pursuant hereto, or in connection herewith, shall prove to have been incorrect in any material respect when made; or
4. A default exists under any other agreement or instrument of Debtor's with or in favor of Secured Party or any direct or indirect affiliate of Secured Party; or
5. The Collateral shall be lost, stolen, substantially damaged, destroyed (unless (i) such occurrence is fully covered by insurance, and (ii) the Loan is fully repaid within thirty (30) days after such occurrence), or shall be sold or encumbered; or Debtor's rights in the Collateral shall be voluntarily or involuntarily transferred, by way of sale, lease or creation of a security interest, or by way of attachment, levy, garnishment or other judicial process, or otherwise; or
6. Debtor shall become insolvent or be generally unable to meet its obligations as they mature, make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they mature, or suspend the operation of its present business; or
7. A trustee, receiver or custodian shall be appointed for Debtor or for a substantial part of its property without the consent of Debtor and not be discharged within thirty (30) days; or
8. Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings shall be instituted by or against Debtor, and, if instituted against Debtor, be consented to or remain undismissed for a period of thirty (30) days; or
9. An event described in Section 6, 7, or 8 shall occur with respect to any party who is guarantor or surety for the Indebtedness; or
10. Any default shall be made by Debtor in any obligation for the payment of borrowed money or capitalized leases or any such obligation shall become or be declared to be due and payable prior to the original stated maturity thereof; or
11. Liquidation or dissolution of Debtor; or
12. Sale, transfer or exchange, directly or indirectly, in one or more transactions, of a controlling stock interest in Debtor or the suspension of Debtor's present business; or
13. The Pension Benefit Guaranty Corporation shall commence proceedings under Section 4042 of the Employee Retirement Income Security Act of 1974 to terminate any employee pension benefit plan of Debtor; or
14. The attempted repudiation of any guaranties for obligations of Debtor to Secured Party.

**Remedies.** Upon any event of default and at any time thereafter, Secured Party may declare all the Indebtedness immediately due and payable in full (unless such event of default comprises one or more of the events described in paragraphs 7 or 8 above, in which case all the Indebtedness shall become immediately due and payable in full without declaration, notice or other action on the part of Secured Party), and may proceed to enforce payment thereof and exercise any and all of the rights and remedies provided by the Uniform Commercial Code as well as all other rights and remedies of Secured Party hereunder or under other applicable law. Upon the occurrence of an event of default, Debtor shall, upon demand by Secured Party, assemble the Collateral and make it available to Secured Party at a place designated by Secured Party reasonably convenient to both parties. Secured Party may, at its election, enforce its rights under this Agreement by a suit in equity for specific performance. Debtor grants Secured Party the right to enter upon any premises of Debtor for the purpose of recovering possession of the Collateral or any part thereof after the occurrence of an event of default, or for the preservation or enforcement of Secured Party's other rights hereunder, all without demand or notice to Debtor and without judicial hearing or proceedings, which Debtor hereby expressly waives. The requirements of reasonable notice shall be deemed met if such notice is mailed to an address of Debtor shown at the beginning of this Agreement at least ten (10) days before the time of the sale or disposition, but nothing contained herein shall be construed to mean that other notice or a shorter period of time does not constitute reasonable notice of the sale or other disposition of the Collateral. Debtor shall reimburse Secured Party for all Secured Party's expenses of retaking, holding, preparing for sale, selling or otherwise dealing with or disposing of the Collateral, including attorney's fees in the amount of fifteen percent (15%) of the outstanding principal balance of and interest on the Indebtedness (but not to exceed the amount of

attorneys' fees actually incurred) if collection is by or through an attorney at law. Subject to applicable law, Debtor shall pay any Indebtedness remaining unpaid after sale or other disposition of any or all of the Collateral. Any surplus proceeds from the sale or other disposition of the Collateral remaining after full satisfaction of the Indebtedness shall be paid to Debtor or to such other persons as may be entitled thereto under applicable law.

**Cumulative Rights and No Waiver.** Each and every right granted to Secured Party hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of Secured Party to exercise, and no delay in exercising, any right shall operate as a waiver thereof, nor shall any single or partial exercise by Secured Party of any right preclude any other or future exercise thereof or the exercise of any other right.

**Financing Statements.** Debtor shall sign and deliver to Secured Party such financing statements and other documents as Secured Party may deem necessary to perfect, protect and continue its security interest in the Collateral, in form satisfactory to Secured Party. Debtor will reimburse Secured Party for all expenses incurred in (i) the filing and recording of this Note and Security Agreement with the Interstate Commerce Commission in accordance with Section 11303 of the Revised Interstate Commerce Act and the regulations promulgated thereunder; and (ii) the filing of financing statements, continuation statements, termination statements and any other documents relating to the perfection of Secured Party's security interest in the Collateral. A carbon, photographic or other reproduction of this Agreement or of a financing statement relating to the security interest herein granted is sufficient as a financing statement. Debtor authorizes Secured Party to file financing statements as to the Collateral signed only by Secured Party and not by Debtor. All references in this Note and Security Agreement to financing statements shall include, but not be limited to, filings and recordings with the Interstate Commerce Commission.

**Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Assignability.** Debtor acknowledges that the rights of Secured Party may be assigned to any person in whole or in part at the sole discretion of Secured Party, and Debtor agrees that any defense it may have against Secured Party as to events occurring prior to any assignment shall not be asserted, and shall be void, against any assignee of the rights of Secured Party. Debtor shall not assign any of its rights or obligations under this Agreement to any person without the prior written consent of Secured Party, and in the absence of such prior written consent, no such assignment of any right or obligation of Debtor hereunder shall be binding on Secured Party. Subject to the foregoing limitations, the terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties.

**Warranty Disclaimer.** Secured Party is not a manufacturer or seller of the Collateral and makes no warranties whatsoever with respect to the Collateral, including without limitation warranties of title, merchantability or fitness for any particular purpose. Debtor shall not assert any breach of any such warranty as a defense to any of its obligations to Secured Party under this Agreement; however, nothing in this Agreement shall be construed to impair any of Debtor's remedies for breach of warranty against any seller or manufacturer of the Collateral.

**Governing Law; Consent to Venue and Personal Jurisdiction.** This agreement shall be construed and enforced in accordance with and governed by the laws of the State of Georgia as of the date hereof. If the address of Debtor's residence or principal place of business shown herein is not in the State of Georgia, Debtor consents to the exercise of personal jurisdiction over Debtor by any court or record sitting in the State of Georgia in connection with any action arising out of this Agreement, and waives all objections to service of process on Debtor at such address.

**Waiver of Jury Trial.** Secured Party and Debtor each waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matter whatsoever arising out of or in any way connected with this Agreement.

**IN WITNESS WHEREOF,** the parties have caused their names to be signed and their seals affixed as of the date first above written. By execution hereof each party intends and agrees to be legally bound by all the provisions of this Agreement.

**NationsBanc Leasing Corporation** (Secured Party)

By: 

Printed Name: **DAMON R. EXCELL**

Title: **VICE PRESIDENT**

**Pioneer Railroad Equipment Co., Ltd.** (Debtor)

By:  - CFO 12-23-97

Printed Name: **J. Michael Carr**

Title: **CFO**

This **Annex A** constitutes an integral part of **Note and Security Agreement No. 07024-00702** dated December 15, 1997, (the "Note"), between Pioneer Railroad Equipment Co., Ltd. (the "Debtor") and NationsBanc Leasing Corporation (the "Secured Party"). Words and terms which are defined in the Note shall have the same meanings herein as therein provided.

The following provisions are hereby made a part of and incorporated in the Note:

(a) Debtor agrees to comply in all respects with all laws of the jurisdictions in which the Collateral may be operated, with all applicable rules of the Association of American Railroads, and with all laws, rules, regulations and orders of the Department of Transportation and the Interstate Commerce Commission and any other federal, state or local legislative, executive, administrative or judicial body exercising any power of jurisdiction over the Collateral (collectively, "Applicable Laws"). In the event that any Applicable Law requires the alteration of any Collateral, or in case any Collateral or accessory or attachment thereto shall be required to be changed or replaced, or in case any additional or other accessory or attachment is required to be installed on any Collateral in order to comply with Applicable Laws, Debtor agrees to make such alterations, changes, additions and replacements at its own expense; and Debtor agrees at its own expense to use, store, maintain and operate the Collateral in full compliance with the Applicable Laws throughout the term of this Note.

(b) In addition to its covenants and agreements under the Note regarding the location of the Collateral, Debtor agrees that the Collateral will be used primarily in the continental United States and that Debtor will use its best efforts to cause any Collateral which is used outside of the continental United States to remain outside of the continental United States for the shortest possible time.

(c) In addition to its covenants and agreements under the Note regarding financing statements, Debtor agrees that it will, at its expense prior to the delivery and acceptance of any Collateral under the Note, cause the Note to be filed and recorded with the ~~Interstate Commerce Commission~~ <sup>SURFACE</sup> in accordance with Section 11303 of the Revised Interstate Commerce Act and the regulations promulgated thereunder. All references in the Note to "financing statements" shall be deemed to include filings and recordings with the ~~Interstate Commerce Commission~~ <sup>SURFACE</sup>.  
*Transportation Board*

(d) Debtor shall maintain on each side of each item of Collateral the following identification in block letters not less than two inches high: "NATIONSBANC LEASING CORPORATION, SECURED PARTY", or other appropriate words designated by Secured Party, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the rights of the Secured Party under this Note. Debtor will not place any Collateral in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such markings which may be removed, defaced or destroyed.

(e) Debtor shall maintain on each unit of Collateral the serial and other identifying numbers set forth on page one of the Note under the heading "Equipment", and Debtor will not change the identifying number of any Collateral except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been delivered to Secured Party by Debtor and filed, recorded or deposited by Debtor in all public offices where this Note or any notice thereof shall have been filed, recorded or deposited.

(f) Except as provided in the preceding clauses (d) and (e), Debtor will not allow the name of any person, corporation or other entity to be placed on any Collateral that might be interpreted as a claim of ownership; provided, however, that Debtor may cause Collateral to be lettered with the names or initials or other insignia customarily used by Debtor on railroad equipment used by Debtor of the same or a similar type.

In the event of any inconsistency between any provision of this Annex A and any other provision(s) of the Note, the provisions of this Annex A shall be controlling, but only to the extent of such inconsistency.

**IN WITNESS WHEREOF**, the parties have caused their names to be signed and their seals affixed as of the date first above written. By execution hereof each party intends and agrees to be legally bound by all the provisions of this Agreement.

**NationsBanc Leasing Corporation** (Secured Party)

By: 

Printed Name: **DAMON R. EXCELL**  
**VICE PRESIDENT**

Title: \_\_\_\_\_

**Pioneer Railroad Equipment Co., Ltd.** (Debtor)

By: 

Printed Name: **J. Michael Carr**

Title: **CEO**



STATE OF IL )  
 ) ss:  
COUNTY OF Peoria )

On this 23 day of December, 1997, before me, personally appeared J. M. Carr, to me personally known, who being by me duly sworn, says that (s)he is the CFO of Pioneer Railroad Equipment Co., Ltd., that the seal affixed to the foregoing Note and Security Agreement #07024-00702 is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of said instrument was the free act and deed of said corporation.

Kevin L. Williams  
Notary Public  
OFFICIAL SEAL  
KEVIN L. WILLIAMS  
(Seal) NOTARY PUBLIC, STATE OF ILLINOIS  
MY COMMISSION EXPIRES 4-25-2000  
My Commission expires:

STATE OF GEORGIA )  
 ) ss:  
COUNTY OF DEKALB )

On this \_\_\_\_\_ day of December, 1997, before me, personally appeared Damon R. Excell, to me personally known, who being by me duly sworn, says that (s)he is the Vice President of NATIONS Banc LEASING CORPORATION, that the seal affixed to the foregoing Note and Security Agreement #07024-00702 is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and (s)he acknowledged that the execution of said instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(Seal)

My Commission expires:  
\_\_\_\_\_

Spella Shy  
Notary Public, DeKalb County, Georgia  
My Commission Expires April 27, 2001

EXHIBIT "A"  
TO  
NOTE AND SECURITY AGREEMENT  
NO. 07024-00701  
BETWEEN  
NATIONS Banc LEASING CORPORATION  
AND  
PIONEER RAILROAD EQUIPMENT CO., LTD.

Covered Hoppers ( 71 total)

<u>Car Intial</u>	<u>Car No.</u>	<u>Description</u>
ALAB	302279	(C113) 4,427 CF COVERED HOPPER
ALAB	302855	(C113) 4,427 CF COVERED HOPPER
ALAB	303278	(C113) 4,427 CF COVERED HOPPER
ALAB	303635	(C113) 4,427 CF COVERED HOPPER
ALAB	303650	(C113) 4,427 CF COVERED HOPPER
ALAB	303807	(C113) 4,427 CF COVERED HOPPER
ALAB	303936	(C113) 4,427 CF COVERED HOPPER
ALAB	304001	(C113) 4,427 CF COVERED HOPPER
ALAB	304096	(C113) 4,427 CF COVERED HOPPER
ALAB	304424	(C113) 4,427 CF COVERED HOPPER
ALAB	304509	(C113) 4,427 CF COVERED HOPPER
ALAB	305084	(C113) 4,427 CF COVERED HOPPER
ALAB	305090	(C113) 4,427 CF COVERED HOPPER
ALAB	305266	(C113) 4,427 CF COVERED HOPPER
ALAB	305437	(C113) 4,427 CF COVERED HOPPER
ALAB	305503	(C113) 4,427 CF COVERED HOPPER
ALAB	305596	(C113) 4,427 CF COVERED HOPPER
ALAB	305718	(C113) 4,427 CF COVERED HOPPER
ALAB	305726	(C113) 4,427 CF COVERED HOPPER
ALAB	305738	(C113) 4,427 CF COVERED HOPPER
ALAB	305886	(C113) 4,427 CF COVERED HOPPER
ALAB	306141	(C113) 4,427 CF COVERED HOPPER
ALAB	306243	(C113) 4,427 CF COVERED HOPPER
ALAB	306265	(C113) 4,427 CF COVERED HOPPER
ALAB	306359	(C113) 4,427 CF COVERED HOPPER
ALAB	306510	(C113) 4,427 CF COVERED HOPPER
ALAB	306512	(C113) 4,427 CF COVERED HOPPER
ALAB	307554	(C113) 4,427 CF COVERED HOPPER
ALAB	307582	(C113) 4,427 CF COVERED HOPPER
ALAB	307634	(C113) 4,427 CF COVERED HOPPER
ALAB	307717	(C113) 4,427 CF COVERED HOPPER
ALAB	307852	(C113) 4,427 CF COVERED HOPPER
ALAB	307860	(C113) 4,427 CF COVERED HOPPER
ALAB	307863	(C113) 4,427 CF COVERED HOPPER
ALAB	308026	(C113) 4,427 CF COVERED HOPPER
ALAB	308061	(C113) 4,427 CF COVERED HOPPER
ALAB	308207	(C113) 4,427 CF COVERED HOPPER
ALAB	308251	(C113) 4,427 CF COVERED HOPPER
ALAB	308303	(C113) 4,427 CF COVERED HOPPER
ALAB	308305	(C113) 4,427 CF COVERED HOPPER
ALAB	308773	(C113) 4,427 CF COVERED HOPPER
ALAB	308877	(C113) 4,427 CF COVERED HOPPER
ALAB	309015	(C113) 4,427 CF COVERED HOPPER
ALAB	309099	(C113) 4,427 CF COVERED HOPPER
ALAB	309152	(C113) 4,427 CF COVERED HOPPER

  
 PLEASE INITIAL  


EXHIBIT "A" Continued

<u>Car Initial</u>	<u>Car No.</u>	<u>Description</u>
ALAB	309233	(C113) 4,427 CF COVERED HOPPER
ALAB	<del>309480</del>	(C113) 4,427 CF COVERED HOPPER
ALAB	309744	(C113) 4,427 CF COVERED HOPPER
ALAB	309917	(C113) 4,427 CF COVERED HOPPER
ALAB	309990	(C113) 4,427 CF COVERED HOPPER
ALAB	311019	(C113) 4,427 CF COVERED HOPPER
ALAB	311028	(C113) 4,427 CF COVERED HOPPER
ALAB	311029	(C113) 4,427 CF COVERED HOPPER
ALAB	311323	(C113) 4,427 CF COVERED HOPPER
ALAB	311567	(C113) 4,427 CF COVERED HOPPER
ALAB	311758	(C113) 4,427 CF COVERED HOPPER
ALAB	311964	(C113) 4,460 CF COVERED HOPPER
ALAB	312097	(C113) 4,460 CF COVERED HOPPER
ALAB	312131	(C113) 4,460 CF COVERED HOPPER
ALAB	312198	(C113) 4,460 CF COVERED HOPPER
ALAB	312463	(C113) 4,427 CF COVERED HOPPER
ALAB	312481	(C113) 4,427 CF COVERED HOPPER
ALAB	312546	(C113) 4,427 CF COVERED HOPPER
ALAB	312702	(C113) 4,427 CF COVERED HOPPER
ALAB	312763	(C113) 4,427 CF COVERED HOPPER
ALAB	313042	(C113) 4,750 CF COVERED HOPPER
ALAB	313056	(C113) 4,750 CF COVERED HOPPER
ALAB	313881	(C113) 4,600 CF COVERED HOPPER
ALAB	317024	(C113) 4,427 CF COVERED HOPPER
ALAB	317034	(C113) 4,427 CF COVERED HOPPER
ALAB	317147	(C113) 4,750 CF COVERED HOPPER

NATIONS BANC LEASING CORPORATION

By:

Printed Name:

Title:

**DAMON R. EXCELL**  
**VICE PRESIDENT**

PIONEER RAILROAD  
EQUIPMENT CO., LTD.

By:

Printed Name:

Title:

*J. Michael Carr* *CF* *122391*

*J. Michael Carr*

*CF*

RIDER A  
TO  
NOTE AND SECURITY AGREEMENT NO. 07024-00701  
BETWEEN NATIONSBANC LEASING CORPORATION  
AND  
PIONEER RAILROAD EQUIPMENT CO., LTD.

THIS RIDER A, made this 15th day December, 1997, to Note and Security Agreement No. 07024-00701, ("Agreement") between NATIONSBANC LEASING CORPORATION ("Secured Party") and PIONEER RAILROAD EQUIPMENT CO., LTD. ("Borrower") dated December 15, 1997 ("Agreement"), shall amend the Agreement as follows:.

WITNESSETH:

**Page 2, "SECURITY INTEREST"**

The first sentence thereof is hereby substituted by the following:

"Debtor hereby grants to Secured Party a security interest in and security title to the personal property described above as the "Equipment," together with all parts, additions, accessions, accessories, replacements and substitutions thereto or therefor, and all proceeds therefrom (including any proceeds of insurance against fire or other casualty whether or not the insurance policy contains an endorsement security interest in favor of Secured Party), together with all accounts, contract rights, general intangibles and chattel paper arising from sale, lease or other disposition thereof, all of which is hereinafter called the Collateral".

**Page 2, "SECURITY INTEREST"**

The following is hereby added to the end of the section:

"Notwithstanding the foregoing, Secured Party agrees to release any collateral with respect to which the obligations of Debtor under any particular note or other instrument or agreement or agreement have been paid in full, provided Debtor is not then in default under any other agreement with Secured Party".

**Page 3, "MAINTENANCE AND CLEAR TITLE"**

The first sentence thereof is hereby substituted by the following:

"Debtor shall keep the Collateral in good condition and free from liens and security interests, shall not sign or suffer to be filed in any financing statements relating to the Collateral except those showing Secured Party as sole secured party, shall not sell or offer to sell or otherwise encumber or dispose of any of the Collateral, shall defend the Collateral against all claims and demands of all persons at any time claiming any interest or right therein, and shall not use the Collateral illegally".

**Page 3, "USE OF COLLATERAL"**

The following is hereby added to the end of the section:

"Debtor may lease the Equipment to the third parties from time to time in the ordinary course of Debtor's business. Debtor agrees to provide Secured Party, upon Secured Party's request, the originals of any such leases or rental agreements as well as a report indicating the location and identity of any leases thereunder".

**Page 3, "CHANGE OF STRUCTURE"**

This section is hereby replaced in its entirety by the following:

"Debtor shall maintain its existence, and will not merge or consolidate with or into any other entity (unless debtor is the surviving entity and the financial condition or operations of Debtor is not thereby materially affected, in the sole determination of Secured Party), or sell substantially all of its assets".

**Page 4, "SALE OR REPLACEMENT OF COLLATERAL"**

This section is hereby replaced in its entirety by the following:

"Debtor shall not sell or replace any item or part of the Collateral without the prior written consent of Secured Party, except as provided for in the Annex A attached hereto and replacement parts in the course of normal maintenance and repair of the Equipment".

**Page 4, "POST DEFAULT INTEREST"**

The first sentence thereof is hereby substituted by the following:

"Any principal balance not paid when due or within the applicable grace period (whether by acceleration or otherwise) shall accrue interest at the "Default rate" until such principal balance is paid".

**Page 4, "EVENTS OF DEFAULT"**

**Subsection 1** thereto is hereby replaced in its entirety by the following:

"Default shall be made in the payment of any installment of the Loan, or in the payment of any other Indebtedness, when and as the same becomes due and payable, whether at the stated maturity thereof or by acceleration or otherwise, and such default shall continue unremedied for ten (10) days after written notice thereof is given by Secured Party to debtor, or"

**Subsection 5** thereto is hereby replaced in its entirety by the following:

"The Collateral shall be lost, stolen, substantially damaged, destroyed (unless (i) such occurrence is fully covered by insurance and paid for under A.A.R.R. rules, and (ii) the insurance proceeds are applied as hereinabove and set forth), or shall be sold or encumbered; or Debtor's rights in the Collateral shall be voluntarily or involuntarily transferred, by way of sale, or creation of a security interest, or by way of attachment, levy garnishment or other judicial process that is not dismissed within thirty (30) days after imposition thereof, or otherwise; or"

Page 5, "GOVERNING LAW; CONSENT TO VENUE AND PERSONAL JURISDICTION"

The second sentence thereto is hereby replaced by the following:

"The parties hereto agree and consent that, with respect to any action arising out of this Agreement, the exclusive venue therefor shall be the Federal District Court, Central District of Illinois, Peoria Division."

IN WITNESS WHEREOF, the parties hereto have caused this Rider A to be executed on the day and year first above written.

NATIONS BANK LEASING CORPORATION

PIONEER RAILROAD EQUIPMENT CO., LTD

By: 

By: 

Printed Name:

**DAMON R. EXCELL**  
**VICE PRESIDENT**

Printed Name:

**J. Michael Carr**

Title:

Title:

**CFO**